

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CHARLES NDHLOVU,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

**Criminal Action No.
1:09-cr-00241-WSD-11**

**Civil Action No.
1:14-cv-00753-WSD**

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Catherine M. Salinas’ Final Report and Recommendation [650] (“R&R”),¹ recommending dismissal of Movant Charles Ndhlovu’s (“Movant”) Motion to Vacate, Set Aside, or Correct Sentence Pursuant to Title 28 U.S.C. § 2255 [629] (“Section 2255 Motion”).

I. BACKGROUND

On March 10, 2014, Movant filed his Section 2255 Motion [629]. On March 1, 2016, the Magistrate Judge ordered (“March 1, 2016, Order”) Movant “to either confirm that he remains at the last address he provided to the Court, see [646], or provide an updated mailing address, in either case within fourteen (14)

¹ Citations to the record, in this Order, refer to case number 1:09-cr-00241-WSD-11.

days of the entry date of this Order.” ([649] at 2). The Magistrate Judge notified Movant that “[a] failure to keep the clerk’s office so informed [of a party’s current address] which causes a delay or otherwise adversely affects the management of a civil case shall constitute grounds for dismissal without prejudice”

LR 83.1D(3), NDGa. Movant did not respond to the March 1, 2016, Order.

II. DISCUSSION

On April 4, 2016, the Magistrate Judge issued her R&R. In it, she recommends the Court dismiss Movant’s Section 2255 Motion for failure to comply with a lawful order of the Court. Movant did not file objections to the R&R, and the Court thus reviews it for plain error. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984).

Under Local Rule 41.3(A)(2), “[t]he court may, with or without notice to the parties, dismiss a civil case for want of prosecution if: . . . [a] plaintiff . . . shall, after notice, . . . fail or refuse to obey a lawful order of the court in the case.”

LR 41.3(A)(2), NDGa.

Movant failed to respond to the March 1, 2016, Order after being advised that failure to notify the Court of his current address could result in the dismissal of this action. The Magistrate Judge recommends this action be dismissed for Movant’s failure to comply with the Court’s order. The Court finds no plain error

in these findings and recommendation. Slay, 714 F.2d at 1095. Accordingly, this action is dismissed pursuant to Local Rule 41.3(A)(2).

The Magistrate Judge also recommends the Court deny a certificate of appealability. A court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.”

28 U.S.C. § 2253(c)(2). A substantial showing of the denial of a constitutional right “includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)). The Magistrate Judge found the dismissal of Movant’s Section 2255 Motion is not debatable by jurists of reason, and she recommends the Court deny a certificate of appealability. The Court finds no plain error in these findings and recommendation, and a certificate of appealability is denied. See Slay, 714 F.2d at 1095.

III. CONCLUSION

For the foregoing reasons,


IT IS HEREBY ORDERED that Magistrate Judge Catherine M. Salinas’ Final Report and Recommendation [650] is **ADOPTED**.

IT IS FURTHER ORDERED that Movant Charles Ndhlovu's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to Title 28 U.S.C. § 2255 [629] is **DISMISSED**.

IT IS FURTHER ORDERED that civil action number 1:14-cv-00753-WSD is **DISMISSED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

SO ORDERED this 3rd day of October, 2016.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE